Panjang Railway Station, Kelantan, and when asked if she had anything to declare replied that she had only some old clothings. On examination of the two bags which she was carrying a number of articles were found other than old clothings. Evidence was led that these articles were dutiable goods. The respondent did not give an explanation with regard to these articles which the Customs Officer considered reasonable nor did she produce any receipts. The respondent was accordingly charged as stated above, and to this charge she claimed trial.

What the prosecution had to prove in this case was simply that the respondent was in possession of dutiable goods at the time and place alleged in the charge. That is all they had to prove. The respondent was alleged to have said she had nothing to declare and was found to be carrying a number of articles and to be wearing, amongst other things, two new sarongs. The Customs Officers were not satisfied with her explanation as to these goods and she produced no receipts in respect of them. One can assume in the absence of evidence to the contrary that Customs Officers do not act capriciously when considering the facts of such a case and whether a charge should be brought. In the case of *Public Prosecutor* v. *Tay Yew Lia*[1], Good J. put it this way:

> "The effect of section 115 of the Customs Ordinance, 1952, is that if a Customs Officer finds a person in possession of dutiable goods anywhere in the Federation he can take him to Court and make him prove that the duty has been paid, or make him rebut the presumption of knowledge which is created by section 131(2)."

No presumption arises under section 115 of the Ordinance. When a person is charged and claims trial a dispute arises. Once a dispute has arisen section 115 says the burden of proof is on the defendant. The defendant may discharge this onus by producing a receipt for the duty or he may know that the duty has been paid and, although unable to produce the receipt, may be able to prove it (see the example of the bottle of whisky in para. 4 of the judgment of Good J. in *Public Prosecutor* v. *Tay Yew Lia, supra*).

If he can do neither of these things he must rebut the presumption of knowledge under section 131(2) (it is a presumption in this instance) that the goods were (in this case) uncustomed. In order to do this all he has to do is to prove to the satisfaction of the Court that he does not know that the duty has not been paid *(Public Prosecutor* v. *Tay Yew Lia, supra)*. He can only do this in his defence.

I think the learned President was confused by the decision in *Yap Yoon Lin* v. *Regina*[2]. In that case the accused was proceeding from Penang to Ipoh with a number of packs of playing cards. Duty was payable on those cards on the mainland but not in Penang. The accused did not declare the playing cards at Butterworth but they were discovered by the Customs before he had left the Customs Shed, when he was still theoretically in Penang. It was held that these playing cards could not have become uncustomed goods until the accused had walked out of the Customs Shed, because they were not dutiable in Penang, and as he had not done that the playing cards had not at the operative time become uncustomed goods, and no offence therefore had at that time been committed.

For what it is worth I find difficult to follow and, with respect, disagree with the decision in *Yap Yoon Lin* v. *Regina*. It seems to me that section 99(1) of the Ordinance means quite simply what it says and that is that when anyone entering or leaving the Federation fails to declare dutiable or prohibited goods in his possession such goods are thereupon, on his denial of the existence of such goods to a Customs Officer, immediately deemed to be uncustomed. From that moment onwards he is in possession of uncustomed goods, whether at that stage they come within the definition of "uncustomed goods" in section 2 or not.

However, the facts in the present case differ from the facts in that case because, as I understand it, the respondent had not come from Thailand and was simply at Rantau Panjang, which is in Kelantan, and at the place where she was stopped the goods found in her possession were dutiable. Accordingly, the case of *Yap Yoon Lin* v. *Regina* is of no assistance on the facts of this case.

I accordingly allowed the appeal, quashed the order of acquittal and discharge, and ordered the case to be remitted to the learned President for him to call upon the respondent for her defence.

Appeal allowed.

CHUAH KOOI HOE v. PUBLIC PROSECUTOR

[A. Cr. J. (Hepworth J.) March 2, 1960]

[Raub — Criminal Appeal No. 12 of 1960]

Criminal Law and Procedure — Penal Code (Cap. 45), s.420 — Prevention of Corruption Ordinance 1950, s.3(a) — Misjoinder of charges — Whether illegality or irregularity.

The appellant, in this case, was charged with, and convicted of cheating under section 420 of the Penal Code, and also an offence of corruption under section 3(a) of the Prevention of Corruption Ordinance. The main ground of appeal was that it was an illegality to charge an accused person with the offence of cheating under section 420 of the Penal Code and the offence of corruption under the Prevention of Corruption Ordinance, 1950, and have the two charges tried at one and the same time.

Held: it is a misjoinder of charges as certain evidence admissible on one charge would be inadmissible under the other; also, persons who were accomplices in one charge would not be accomplices under the other. However this amounted to an irregularity and not an illegality.

Cases referred to:—

(1) *Banta Singh* v. *Public Prosecutor* [1941] M.L.J. 154.

(2) *Jusoh bin Saman* v. *Public Prosecutor* [1949] M.L.J. 120.

MAGISTRATE'S CRIMINAL APPEAL.

C. O. Lim for the appellant.

Raja Azlan Shah (Federal Counsel) for the respondent.

Hepworth J.: The appellant had been convicted by the President, Sessions Court, at Temerloh of an offence of cheating under section 420 of the Penal Code and an offence of corruptly obtaining $60 in cash under section 3(a) of the Prevention of Corruption Ordinance, 1950, and had been sentenced to six months imprisonment on each charge, the sentences to run concurrently. From these sentences and convictions he appealed.

The facts on which the two charges were based were identical. The appellant was a Police Constable who informed a Police Inspector on the 26th August, 1959, that opium was hidden in a house at the New Village, Mentakab. As a result of this information the Inspector together with the appellant and two other Police Constables carried out an inspection of the house. On finding nothing in the house they then took the car belonging to the owner of the house to the Police Station and searched that. Again they found no opium. While the owner of the house and the car was at the Police Station and the car was being searched the appellant returned to the house and saw the wife of the owner and stated that unless he received the sum of $80 the house would again be searched by the Inspector. After some negotiation the appellant was alleged to have accepted $60 and then went away.

The main ground of appeal was that it was an illegality to charge an accused person with the offence of cheating under section 420 of the Penal Code and the offence of corruption under the Prevention of Corruption Ordinance, 1950, and have the two charges tried at one and the same time. It is clearly wrong to join two such charges arising out of the same facts, and I cannot understand why it was done. Certain evidence admissible on one charge would be inadmissible under the other and persons who were accomplices in one charge would not be accomplices under the other. But on the authority of *Banta Singh* v. *Public Prosecutor*[1] I reached the conclusion that the hearing of these two charges at one and the same time amounted to an irregularity and not an illegality.

Jusoh bin Saman v. *Public Prosecutor*[2] in which *Banta Singh* v. *Public Prosecutor, supra,* was quoted with approval would have been authority for ordering a re-trial had other aspects of the case convinced me that it would be in the interests of justice so to do. But this was not the case.

The charge alleged that the offence took place at 11 p.m. on 26th August, 1959, and this was confirmed by the first four Prosecution Witnesses whereas a Police Inspector, P.W. 8, gave evidence to the effect that he carried out an investigation into the case at 1.15 p.m. on the 26th August, 1959, which according to the Prosecution evidence was some 10 hours prior to the commission of the offence. P.W. 8's evidence was in no way challenged. When the appellant was first charged the charge stated that the offence took place at about 11 p.m. on the 25th August, 1959. At the commencement of the hearing in the Sessions Court the charges were specifically amended so as to read the 26th of August, 1959, and the Prosecution then and there proceeded to endeavour to prove their case. It is difficult to reconcile this deliberate change of the date in the charge at the hearing with the evidence of P.W. 8, the Police Inspector, that he commenced the investigation at a time on the 26th August which was some 10 hours prior to the time mentioned in the charge as that upon which the offence was committed. It was apparent, therefore, on the face of it that something was seriously wrong somewhere.

Owing to this very unsatisfactory aspect of the case I came to the conclusion that it would not be in the best interests of justice to order a retrial. I accordingly allowed the appeal and quashed the conviction and sentence.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

LIM CHEW YOONG v. REG.

[C. C. A. (Rose C.J., Chua and Ambrose JJ.) March 4, 1960]

[Singapore — Criminal Appeal No. 39 of 1959]

Criminal Law and Procedure — Unlawful assembly — Penal Code (Cap. 119), ss.149 and 302 — Separate verdict in respect of each accused person jointly charged — Whether unreasonable.

The appellant (the 1st and 2nd accused were acquitted) appealed against his conviction on the ground that the verdict of the Jury was imperfect inasmuch as: (a) although there were three accused persons jointly charged with one offence, they returned a separate verdict in respect of each accused person, which, upon the facts of the case presented by the Crown, it was not open to them to do so; (b) even if the Jury were entitled to return a separate verdict in respect of each accused person, that verdict was an indivisible one having regard to the nature of the charge, and they were not entitled to bring in a verdict of 'not guilty' against the first and second accused and a verdict of 'guilty' against the appellant.

Held: (1) there was no substance in the above ground of appeal in that the principal question for the consideration of the Jury was whether they were satisfied that the accused, or any of them, were amongst the group of five or six persons;

(2) the learned Judge put the issues properly and carefully before the Jury and correctly distinguished the cases of each of the three accused persons;

(3) the case of the appellant was eminently distinguishable from that of his two co-accused and that the Jury could hardly have come to any other conclusion but that the appellant was guilty of the offence with which he was charged.